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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

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FRANK J. KELLEY, Attorney General  
for the State of Michigan, FRANK J.  
KELLEY, ex rel MICHIGAN NATURAL  
RESOURCES COMMISSION, MICHIGAN  
WATER RESOURCES COMMISSION and  
HOWARD A. TANNER, Director of  
the Michigan Department of  
Natural Resources,

Plaintiffs,

Case No. 79-929-190-CE

-vs-

CHEMICAL RECOVERY SYSTEMS, INC.,  
a Michigan corporation, M. S. & N.  
CORPORATION, a Michigan corporation,  
NOLWOOD CHEMICAL CORPORATION, a  
Michigan corporation, EDWARD W.  
LAWRENCE, a Michigan Resident,  
A. H. MAGNUS, JR., a Michigan  
Resident, ARTHUR B. McWOOD, JR.,  
a Michigan Resident, CHARLES H.  
NOLTON, a Michigan Resident, and  
PETER J. SHAGENA, a Michigan Resident,

THIRD PARTY COMPLAINT  
AGAINST WAYNE COUNTY DRAIN  
COMMISSION, WAYNE COUNTY  
DEPARTMENT OF HEALTH, AND  
CITY OF ROMULUS

Defendants and  
Third Party Plaintiffs,

-vs-

PRODUCTS-SOL, INC., a Michigan  
corporation,

Third Party Defendant.

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NOW COME Defendants, CHEMICAL RECOVERY SYSTEMS, INC.,  
a Michigan corporation, M. S. & N. CORPORATION, a Michigan corpo-  
ration, NOLWOOD CHEMICAL CORPORATION, a Michigan corporation,  
A. H. MAGNUS, JR., a Michigan Resident, ARTHUR B. McWOOD, JR., a  
Michigan Resident, CHARLES H. NOLTON, a Michigan Resident, and  
PETER J. SHAGENA, a Michigan Resident, by and through their  
attorneys, MURPHY, BURNS & McINERNEY, P.C., and for their Third  
Party Complaint against WAYNE COUNTY DRAIN COMMISSION, CITY OF

ROMULUS, WAYNE COUNTY DEPARTMENT OF HEALTH, states as follows:

GENERAL ALLEGATIONS

1. Defendant, CHEMICAL RECOVERY SYSTEMS, INC., is a Michigan corporation with offices at 36345 Van Born Road, Romulus, Michigan.
2. Defendant, M. S. & N. CORPORATION, is a Michigan corporation with offices at 28780 John R, Madison Heights, Michigan.
3. Defendant, NOLWOOD CHEMICAL CORPORATION, is a Michigan corporation with offices at 8970 Hubbell, Detroit, Michigan.
4. Defendant, A. H. MAGNUS, JR., is a resident of the State of Michigan, residing at [REDACTED]  
[REDACTED]
5. Defendant, ARTHUR B. MC WOOD, JR., is a resident of the State of Michigan, residing at [REDACTED] [REDACTED]  
[REDACTED]
6. Defendant, CHARLES H. NOLTON, is a resident of the State of Michigan, residing at [REDACTED]  
[REDACTED]
7. Defendant, PETER J. SHAGENA, is a resident of the State of Michigan, residing at [REDACTED]
8. During 1967, Marathon Finance Company, a Delaware corporation, conveyed the property located at 36345 Van Born Road, Romulus Township, Wayne County, Michigan, by Warranty Deed to Cam Chem Company, a Michigan corporation.
9. That during late 1970 or early 1971, Cam Chem Company, a Michigan corporation, owned the property which is the subject

matter of this Complaint, commonly referred to as 36345 Van Born Road, Romulus, Michigan, and operated a chemical recovery company thereon.

10. That during this period of time, Cam Chem Company dumped thousands of gallons of chemical wastes, sludges, residues from their refining process, and industrial liquid wastes, on the ground in violation of applicable state laws.

11. During early 1971 or late 1970, Cam Chem Company conveyed ownership of all outstanding stock, assets and liabilities of the company to Products-Sol Company, a Michigan corporation.

12. During the year of 1971, until approximately November 23, Products-Sol Company operated a chemical recovery process on the property located at 36345 Van Born Road.

13. Products-Sol Company, dumped and stored chemical wastes, sludges, residues and industrial wastes in and on said property, in violation of applicable state statutes and laws.

14. The production and manufacturing process which took place on the property by Cam Chem Company and Products-Sol Company produced a by-product which is highly toxic and is a hazardous substance.

15. Upon information and belief, the chemical industrial wastes generated by Cam Chem Company and Products-Sol Company include, among other chemical constituents, the following:

(1) Dichloroethane, (2) Dichloroethane, (3) Trichloroethane, (4) Trichloroethylene, (5) Toluene, and other aliphatic chlorinated hydrocarbons; (6) Benzene, Toluene, Xylene, Phenol, (7) Methyl Ethyl Ketone, (8) Methyl Isobutyl Ketone. All of the above chemical by-products were discharged into and onto the property and leached into the ground water causing serious contamination

of the property located at 36345 Van Born Road, Romulus, Michigan.

16. If and to the extent that the property located at 36345 Van Born Road, Romulus, Michigan, is presently contaminated, it was a result of the acts and/or omissions of Third Party Defendants hereinafter alleged.

17. On or about August 20, 1979, Plaintiffs, the State of Michigan, et al., commenced this action against Defendants, Chemical Recovery Systems, Inc., et al., seeking, among other things, preliminary and permanent injunctive relief which would compel Defendants to: "(1) completely eliminate the contaminated, sand-lined seepage lagoons on their property, known as the 'vinyl pond' and the 'east pond,' and safely remove, transport, and dispose of the contaminated liquid, semi-solid, and solid materials contained therein, and at least 83,800 cubic yards of contaminated soil from beneath the sand-lined seepage lagoons and from other areas of Defendants' property; (2) backfill the excavated areas with clean fill and regrade the surface of their property to prevent future contamination of Trouton Drain and Ecorse Creek; (3) remove all contaminated sludges and abate any existing sediment contamination of Trouton Drain and Ecorse Creek, and return Trouton Drain and Ecorse Creek to the state in which they existed prior to the commencement of operations on Defendants' property; (4) extend and make all corrective modifications of the ground water intercept tile system on Defendants' property necessary to assure that all contaminated ground water flows to and is collected by the ground water intercept tile; (5) reduce and maintain their inventory of waste drums to no more than 2,500 at any one time, and install the secondary containment for all storage areas necessary to prevent future contamination of Trouton Drain and Ecorse Creek." In addition, Plaintiffs ask that Defendants be ordered to: "(1) implement and complete the

foregoing measures pursuant to a firmly scheduled timetable, and be assessed a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day they are in violation of any provision of that timetable; (2) pay all damages necessary to compensate the people and the State of Michigan for Defendants' pollution, impairment, and destruction of the environment; (3) pay all costs of this action including the costs and salaries paid state employees for the investigation and enforcement of this litigation; (4) scrupulously comply with all state statutes, rules and permits governing Defendants' operations."

18. As a result of the actions and omissions of Third Party Defendants, Defendants Chemical Recovery, et al. have expended great sums of money in order to abate the conditions created in and around the site located at 36345 Van Born Road, and is now exposed to substantial potential liability in favor of Plaintiffs herein, and has sustained and will sustain great damage and injury to its property, business profits, and goodwill.

19. That the Wayne County Department of Health is a duly organized governmental body operating in the County of Wayne, State of Michigan.

20. That the Wayne County Drain Commission is a duly organized governmental body operating in the County of Wayne, State of Michigan.

21. That the City of Romulus is a duly organized governmental unit operating in the County of Wayne, State of Michigan.

22. That the causes of action hereinafter described arise out of the same facts and transactions as the above-entitled actions.

23. That the Wayne County Drain Commission, Wayne County Department of Health, and the City of Romulus are parties necessary for complete relief in the above-entitled action and their presence would promote the convenient administration of justice.

24. That the amount in controversy is in excess of Ten Thousand Dollars (\$10,000.00).

COUNT I  
NEGLIGENCE/NUISANCE  
(WAYNE COUNTY DEPARTMENT OF HEALTH)

25. That the Third Party Plaintiffs incorporate by reference Paragraphs 1-24 herein.

26. That the Wayne County Department of Health claims to have jurisdiction over at least part of the subject matter in the above-entitled action. In a May 24, 1976 letter to Chemical Recovery Systems, Inc., the Wayne County Department of Health stated, "Our Department has jurisdiction with regards to control of solid waste disposal . . . ."

27. That the Wayne County Department of Health has a duty to protect the "Public Trust" and supervise and protect the water near Third Party Plaintiff's plant.

28. That the Wayne County Department of Health breached its above-described duty by failing to adequately supervise the Third Party Plaintiff's predecessors in interest, by failing to adequately regulate the area landowners in their use of their property, and by failing to meaningfully assist Third Party Plaintiffs in their contamination containment procedures.

29. That the County of Wayne has made numerous suggestions and requirements for the operation of the Third Party Plaintiff's plant. These suggestions and regulations have been

inconsistent with each other and inconsistent with the suggestions and regulations of other government agencies.

30. That the Wayne County Department of Health breached its duty by refusing to present the Third Party Plaintiffs with a consistent, workable set of suggestions and regulations, even though the Wayne County Department of Health was well aware of the fact that the Third Party Plaintiffs could not possibly follow the various inconsistent positions. An October 4, 1976 letter to the Third Party Plaintiffs from the Wayne County Department of Health clearly shows that the Department was aware of the fact that the regulations and suggestions of the various government agencies were inconsistent and impossible to follow. The October 4, 1976 letter states:

When I spoke to you regarding this matter you indicated that your first priority was removing the barrels from the property since you were already past your Department of Natural Resources-Water Resources Commission deadline for accomplishing this end. I obviously do not condone this rationale. In the name of appeasing one agency a previous agreement with a second agency was violated.

31. That as a direct result of the Wayne County Department of Health's refusal to issue consistent workable suggestions and regulations, the Third Party Plaintiffs have been unable to effectively deal with the contamination problem on and about their property.

32. That the Wayne County Department of Health further breached its duty by failing to inspect and monitor area residents' septic systems, by allowing these septic systems to be installed and used.

33. That if the waters surrounding Third Party Plaintiff's plant are contaminated, this contamination is at least partially a direct result of the Wayne County Department of Health's breaches

hereinabove described and constitutes a nuisance.

34. That as hereinabove described, this nuisance has greatly damaged the Third Party Plaintiffs.

35. That the Wayne County Department of Health is a party necessary if complete relief is to be granted and for the convenient administration of justice.

WHEREFORE, Third Party Plaintiffs pray for judgment in an amount and kind to which they are entitled, plus interest, costs and attorneys fees, and the relief as hereinafter further requested.

#### COUNT II

##### NEGLIGENCE/NUISANCE (WAYNE COUNTY DRAIN COMMISSION)

36. That the Third Party Plaintiffs incorporate by reference Paragraphs 1-35 herein.

37. That the Wayne County Drain Commission has at least partial jurisdiction over the manner in which the Third Party Plaintiffs must operate their chemical recovery plant. They have authority and jurisdiction of Trouton Drain.

38. That the Wayne County Drain Commission has a duty to protect the "Public Trust" and maintain and operate the drainage system in and around the Third Party Plaintiff's plant.

39. That the Wayne County Drain Commission breached its above-described duty by failing to adequately supervise the Third Party Plaintiff's predecessors in interest, by failing to adequately regulate the area landowners in their use of their drainage systems, and by failing to meaningfully assist the Third Party Plaintiffs in their contamination containment procedures.



40. That if the waters surrounding Third Party Plaintiff's plant are contaminated, foul smelling and polluted, the condition is at least partially a direct result of the Wayne County Drain Commission's breaches herein described and constitutes a nuisance.

41. That as hereinabove described, this nuisance has greatly damaged the Third Party Plaintiffs.

42. That the Wayne County Drain Commission is a party necessary if complete relief is to be granted and for the convenient administration of justice.

WHEREFORE, Third Party Plaintiffs pray for judgment in an amount and kind to which they are entitled, plus interest, costs and attorneys fees, and the relief as hereinafter further requested.

### COUNT III

#### NEGLIGENCE/NUISANCE (CITY OF ROMULUS)

43. That the Third Party Plaintiffs incorporate by reference Paragraphs 1-42 herein.

44. That the City of Romulus has jurisdiction over at least part of the operation of the Third Party Plaintiff's plant.

45. That the City of Romulus has a duty to protect the "Public Trust" and supervise and protect the environment near the Third Party Plaintiff's plant.

46. That the City of Romulus breached its above-described duty by failing to adequately supervise the Third Party Plaintiff's predecessors in interest, by failing to adequately regulate the landowners near the Third Party Plaintiff's plant in

their use of their property, and by failing to meaningfully assist Third Party Plaintiffs in their contamination containment procedures.

47. That the City of Romulus has issued regulations and suggestions to the Third Party Plaintiffs which are inconsistent with each other and inconsistent with other governmental agencies.

48. That the City of Romulus was aware of the inconsistency of these positions; however, they refused to issue workable, reasonable suggestions and regulations.

49. That these inconsistent suggestions and regulations made it effectively impossible for the Third Party Plaintiffs to successfully control the contamination in and about the plant site.

50. That the City of Romulus has failed to adequately supervise the installation and use of septic systems of individual landowners in the area of the Third Party Plaintiff's plant which has caused the waters in and about the Third Party Plaintiff's plant to become contaminated.

51. That if the waters surrounding Third Party Plaintiff's plant are contaminated, foul smelling, and polluted, the condition is, at least partly, a direct result of the City of Romulus' breaches herein described and constitutes a nuisance.

52. That as hereinabove described, this nuisance has greatly damaged the Third Party Plaintiffs.

53. That the City of Romulus is a party necessary if complete relief is to be granted and for the convenient administration of justice.

WHEREFORE, Third Party Plaintiffs pray for judgment in an amount and kind to which they are entitled, plus interest, costs and attorneys fees, and the relief as hereinafter further requested.

FURTHER RELIEF REQUESTED

WHEREFORE, Third Party Plaintiffs respectfully pray that this Court grant the following relief with respect to all Third Party Plaintiffs and all counts:

1. A mandatory, permanent injunction be issued which requires, inter alia:

A. That Third Party Defendants remove any contaminated materials, soils, and sediments that may exist in and around Third Party Plaintiff's plant;

B. That Third Party Defendants do all things necessary to restore the area around the Third Party Plaintiff's plant to its natural condition;

C. That Third Party Defendants perform all acts sought by Plaintiffs to be performed by Third Party Plaintiffs in Plaintiffs' Complaint.

2. That Third Party Defendants reimburse Third Party Plaintiffs for all costs of this action, including attorneys fees.

3. That Third Party Plaintiffs be permitted to continue proceeding with all other matters still to be resolved in the above-entitled action.

4. That Third Party Plaintiffs be awarded such other and further relief as the Court deems just and proper.

DATED: October 10, 1979

MURPHY, BURNS & MCINERNEY, P.C.  
Attorneys for Defendants and  
Third Party Plaintiffs

By



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